

In the Matter of License No. 126629 and all other Licenses and Documents

Issued to: ROBERT H. NUNNALLY

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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ROBERT H. NUNNALLY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 18 December 1956, an Examiner of the United States Coast Guard at Norfolk, Virginia, suspended License No. 126629 issued to Robert H. Nunnally upon finding him guilty of misconduct. Two specifications allege that while serving as First Assistant Engineer on board the American USNS MISSION CAPISTRANO under authority of the license above described, on or about 24 November 1956, while the vessel was departing from the port of Pozzuoli, Italy, Appellant was unable to perform his duties due to intoxication; on or about 26 November 1956, while the vessel was in the port of Cagliari, Sardinia, Appellant failed to perform his duties due to intoxication.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of an entry in the ship's Official Logbook as well as a certified copy of extracts from the Shipping Articles for the voyage covering the dates contained in the two specifications.

In defense, Appellant offered in evidence his sworn testimony. He admitted that he returned on board the ship in an intoxicated condition on 24 November but insisted that the Chief Engineer was the sole cause of the trouble because he wanted to remove Appellant in order to give his job to the Second Assistant Engineer.

At the conclusion of the hearing, having given both parties an

opportunity to submit argument and proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and two specifications had been proved. He then entered the order suspending Appellant's License No. 126629, and all other licenses and documents issued to appellant by the United States Coast Guard or its predecessor authority, for a period of two months outright and four months on probation until twelve months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby make the following

#### FINDINGS OF FACT

On 24 and 26 November 1956, Appellant was serving as First Assistant Engineer on board the American USNS MISSION CAPISTRANO and acting under authority of his License No. 126629 while the ship was on a foreign voyage.

While the ship was at Pozzuoli, Italy. on 24 November 1956, Appellant returned on board in an intoxicated condition. He was unable to perform his duties of getting the engine plant ready to go to sea and operating the engines.

The ship was in the port of Cagliari, Sardinia, on 26 November 1956. On this date, Appellant was in his bunk under the influence of alcohol. As a result of this condition, he failed to perform his duties on this date.

Appellant was logged two days wages of \$57.33 because of these incidents.

#### BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the decision of the Examiner is in error and contrary to Appellant's sworn testimony. The decision is based on false statements in a logbook entry which was made by a prejudiced Master at the instigation of a biased Chief Engineer who schemed to replace Appellant with the Second Assistant Engineer. Appellant was not called when the vessel left Pozzuoli on the evening of 24 November.

This record will hinder Appellant in obtaining employment on other ships. In view of the grounds for reasonable doubt indicated above, it is respectfully submitted that these alleged offenses should be removed from Appellant's record.

#### OPINION

The Examiner rejected Appellant's testimony and accepted the log entry as stating the true facts on the theory that a Master would not log a First Assistant Engineer in this manner without good cause. Since the Examiner heard and saw Appellant testify, his finding as to Appellant's credibility will be accepted. Appellant was given several opportunities to subpoena witnesses to testify in support of his contentions but he elected not to do so. Hence, I conclude that the specifications were proved by the required substantial evidence.

As stated by the Examiner, a seaman serving as a First Assistant Engineer is charged with a high degree of responsibility. The severity of the suspension ordered as a result of his wrongful failure to carry out his duties should be commensurate with his position on the ship. Hence, the order imposed by the Examiner will be sustained.

ORDER

The order of the Examiner dated at Norfolk, Virginia on 18 December 1956, is AFFIRMED.

A. C. Richmond  
Vice Admiral United States Coast Guard  
Commandant

Dated at Washington, D. C., this 6th day of June, 1957.